



WISCONSIN

DEPARTMENT OF WORKFORCE DEVELOPMENT
Division of Workforce Solutions
Bureau of Partner Services

**TO: Economic Support Supervisors
Economic Support Lead Workers
Training Staff
Child Care Coordinators
W-2 Agencies**

**FROM: Amy Mendel-Clemens
CARES Call Center
Policy & Systems Communications Section**

**SUBJECT: Timely Compliance with Fact
Findings and Departmental Reviews**

BPS OPERATIONS MEMO

No.: 02-27

**File: 2409 2480.3
2480.4**

Date: 4/18/2002

Non W-2 ☐ W-2 ☒ CC ☐

PRIORITY: High

CROSS REFERENCE: Wisconsin Works Manual Chapters 19.2.10 and 19.3.3

EFFECTIVE DATE: Immediately

PURPOSE

The purpose of this Operations Memo is to reiterate the policy requirement for complying with Fact Finding and Departmental Reviews in a timely manner and to provide instructions to W-2 agencies on how to verify compliance.

BACKGROUND

In March 2001, the Department of Workforce Development formed the Milwaukee W-2 Advisory Panel in order to review and generate practical ideas for improving the effectiveness of W-2 in serving its Milwaukee clients. After conducting interviews, holding forums and engaging in extensive workshops, the W-2 Advisory Panel identified specific areas as having significant potential for improving the effectiveness of W-2 in Milwaukee. Groups were formed to address these areas of concern. Out of these groups, a number of recommendations were developed. Extensive input from the Milwaukee W-2 agencies was solicited. In addition, for those recommendations that were made that impact W-2 policy statewide, input was sought from W-2 agencies outside of Milwaukee as well.

One of the specific areas identified as having significant potential for improvement was ensuring a safety net. In other words, ensuring that existing W-2 policies and procedures met all eligible participants' needs and did not have the potential to harm those in need. Because the safety net recommendations affected the administration of W-2 statewide rather than just in Milwaukee, the Safety Net subgroup consisted of a representative from both a Milwaukee and a balance of state W-2 agency.

This Operations Memo is just one in a series of memos being used to implement the recommendations made by the Safety Net subgroup and approved by the Department of Workforce Development.

POLICY

COMPLIANCE WITH FACT FINDING AND DEPARTMENTAL REVIEW DECISIONS

Section 19.2.10 of the W-2 Manual states, “*W-2 agencies are bound by the Fact Finding decision for a particular case. W-2 agencies must comply with the Fact Finding decision within ten days of the decision date.*”

Similarly, section 19.3.3 states, “*W-2 agencies are bound by the Departmental Review final decision for a particular case. W-2 agencies must comply with the Departmental Review decision within ten days.*”

The following procedures must be followed when a W-2 agency is required, either by a Fact Finder or a DHA Administrative Law Judge (ALJ), to comply with specific requirements of a decision.

Fact Finding Decision. In the case of a Fact Finding decision, if a Fact Finder overturns a W-2 agency decision, the instructions that appear in the **Fact Finding Decision** section of the *Wisconsin Works (W-2) Agency Fact Finding Review* form (DES 10784) must be carried out within ten days of the decision date.

In addition, the following language has been added to DES-10784: *If the W-2 agency has not complied with the decision within ten days of the decision date, please contact the Fact Finder identified below.* This will allow the participant or his representative to quickly follow-up on the status of decisions.

The Division of Workforce Solution’s 2002 Monitoring Plan includes monitoring of fact finding reviews. The purpose of the monitoring is to identify problems and trends within the agency and to follow-up on the agency's implementation of fact finding decisions within the ten day timeframe. The *W-2 Contract Monitoring Fact Finding Review Report* (DES-12355) (see attached) has been updated in order to provide space for agencies to include the date they complied with the fact finding decision. This column labeled, “Compliance Date” must be completed for all fact finding decisions that are found in favor of the participant, including those decisions that were found in favor of the participant but withdrawn prior to reaching a fact finding. Regional staff will conduct CARES reviews to determine timely compliance.

If a W-2 agency is unable to comply with a Fact Finding decision for any reason, the W-2 agency must contact its DWS Regional Office on or before the 10th day and explain the circumstances surrounding why the decision cannot be carried out timely. Cases in which a fact finding decision is not carried out timely, and no attempt has been made to contact the Department to explain why, may result in a corrective action or a failure penalty as defined in the W-2 and Related Programs Contract under Sections 16.3 and 17, respectively.

Departmental Review Decision. In the case of W-2 Departmental Reviews, if a disputed W-2 matter is remanded back to the W-2 agency by DHA and the agency is required to take specific action on an individual’s W-2 case, the instructions will appear under the **Ordered** section of

DHA's response. A W-2 agency is required to comply with these instructions within ten days of the decision, unless another timeframe is designated.

In order to ensure compliance, DHA sends the W-2 agency a *Certification of Administrative Action* (DHA-18) form along with the decision (see attached). This form must be completed and sent back to DHA in order to certify that appropriate action has been taken within ten days. The form should not indicate what the agency will do, but, rather, what the agency has already done to comply with the order. In addition to sending the form back, DHA requires agencies to include copies or make note of CARES screens that have been used to record the action taken. DHA will not close out the case file until there is evidence in CARES that action has been taken.

DHA will be communicating with the Department of Workforce Development on decisions that have not been acted upon timely. When this occurs, DWS Regional Staff will be contacting those W-2 agencies that have not complied. As with Fact Finding decisions, if a W-2 agency is unable to comply with a Departmental Review decision for any reason, the agency must contact its DWS Regional Office on or before the 10th day and explain the circumstances surrounding why the decision cannot be carried out timely. Noncompliance with DHA decisions may result in a corrective action or a failure penalty as defined in the W-2 and Related Programs Contract under Sections 16.3 and 17 respectively.

ISSUES THAT MAY AFFECT TIMELINESS OF FACT FINDING OR DEPARTMENTAL REVIEW DECISION COMPLIANCE

The Division of Workforce Solutions (DWS) is aware of the following situations that may affect the timeliness of complying with either a Fact Finding or a Departmental Review decision and offers the following solutions.

1. **Case Transfers**. There may be cases where a participant transfers from W-2 Agency A to W-2 Agency B while a Fact Finding or Departmental Review decision is pending. If a decision is eventually rendered in favor of the participant, the remedy typically must be initiated by W-2 Agency A, particularly if it involves retroactive benefits. However, in order to do this, the case must first be transferred from W-2 Agency B back to W-2 Agency A. Although additional steps need to be taken under these circumstances in order to get the case transferred, with cooperation from the W-2 agency that currently holds the case, this process can and should still be completed within the ten-day timeframe.

If it cannot be completed within ten days, however, the agency needing to take the action on the case based on the outcome of the Fact Finding decision or DHA decision must contact its DWS regional office to notify them that the action cannot be completed within the timeframe. By contacting the regional office, the Division will be able to determine how often the case transfer process prevents compliance from taking place within ten days and will be able to explore possible resolutions.

NOTE: When this transfer process takes place for the sole purpose of remedying a Fact Finding or DHA decision, each W-2 agency should take action to suppress any notices that may be issued unnecessarily to the participant. For example, when the case is transferred from Agency A to Agency B, CARES generates a notice to the participant indicating that he or she has been assigned to a new office. Because the transfer is only temporary, this notice should be suppressed so as not to cause confusion for the participant.

2. **Assessments**. There may be cases when a W-2 agency is required to do an informal or formal assessment of a participant if a Fact Finder or DHA ALJ determines that the appropriate assessment was never completed. Informal assessments can and must be

completed within ten days of the decision. The appropriate assessment screens in the Work Programs driver flow must also be completed within that timeframe. However, because formal assessments must be conducted by a qualified assessing agency, it may not be possible for the assessment to be *completed* within the ten-day timeframe. Therefore, W-2 agencies are required to *initiate* and document in CARES within ten days a formal assessment referral. Documentation would include the appropriate assessment activity code assigned on CARES screen WPCH with a status of **A** (actual) or **S** (scheduled).

NOTE: Although an agency is required, by policy, to initiate a formal assessment within 30 days, if the agency has been found by a Fact Finder or DHA ALJ not to have done so and subsequently directs the agency to do so, it must be initiated and documented within the ten-day timeframe.

ATTACHMENTS

Wisconsin Works (W-2) Agency Fact Finding Review (Form DES 10784)

W-2 Contract Monitoring Fact Finding Review Report (Form DWSP-12355)

Certification of Administrative Action (Form DHA-18)

CONTACT

Regional Area Administrator's Office or

DWS CARES Information & Problem Resolution Center

Email: carpolcc@dwd.state.wi.us
Telephone: (608) 261-6317 (Option #1)
Fax: (608) 266-8358

Note: Email contacts are preferred. Thank you.

DIVISION OF HEARINGS AND APPEALS
DHA-18 (08/01)

STATE OF WISCONSIN

CERTIFICATION OF ADMINISTRATIVE ACTION for _____

NAME: _____ DHA#: _____
CARES NO.: _____ SSN: _____

COMPLIANCE

This Certification form has been attached to the decision if you have been ordered to take action regarding this appeal. Federal and State law require that action to be taken on a timely basis to avoid fines and penalties. Please FAX completed form to 608-264-9885 or mail to Division of Hearings and Appeals, PO Box 7875, Madison WI 53707-7875 within the time allowed by the order or directed by the Certification form. If you have questions, please call 608-266-3038. **Please include copies or identify screens used from EDS or CARES that action has been taken.

ACTION MUST BE TAKEN NO LATER THAN: _____

W-2 CHANGE ENTERED IN CARES:

DATE _____ AMOUNT _____ BENEFIT PERIOD _____

Comments/Explanation: _____

FOOD STAMP CHANGE ENTERED IN CARES:

DATE _____ AMOUNT _____ BENEFIT PERIOD _____

Comments/Explanation: _____

MEDICAL ASSISTANCE:

OR DATE 3070 SENT TO EDS _____ DATES OF CERTIFICATION _____

TEMPORARY MA CARD GIVEN/MAILED: (DATE) _____

Comments/Explanation: _____

OTHER:

FEF/SSP Signature and XM1 # _____

Date sent to CHA _____

Print Name of individual signing form _____

Telephone number of signer _____

RETURN IMMEDIATELY UPON TAKEN ACTION TO:
Division of Hearings and Appeals
PO Box 7875
Madison, WI 53707-7875
FAX: (608) 264-9885

Sworn Statement:

I swear or affirm that I have read the above report of facts and that it is true and correct to the best of my knowledge.

Participant's Signature	Date Signed
Fact Finder's Signature as Witness	Date Signed

Fact Finding Decision: (Cite Handbook, Policy Manual, Statutes, etc.)

<input type="checkbox"/> W-2 Agency Action Upheld	<input type="checkbox"/> W-2 Agency Action Overturned <i>If the W-2 agency has not complied with the Fact Finding Decision within 10 days of the Decision Date shown below, please contact the Fact Finder.</i>
--	---

Fact Finder's Signature	Fact Finder's Phone Number	Decision Date
-------------------------	----------------------------	---------------

W-2, County/Tribal Agency			
Address	City	State	Zip Code

DEPARTMENTAL REVIEW OF W-2 FACT FINDING

If you do not agree with the decision of the W-2 Agency Fact Finder, you may request a Departmental Review. You must request a Departmental Review within 21 days of the date of the Fact Finding Decision. Late requests will not be accepted. To ask for a Departmental Review, send a written request to: Department of Administration, Division of Hearings and Appeals, PO Box 7875, Madison, WI 53707-7875.

FAIR HEARING

The Fact Finding process applies only to the W-2 program. You may request a separate Fair Hearing on a denial or reduction of Food Stamps and/or Medical Assistance. A Fair Hearing must be requested within 45 days of the action's effective date for Medical Assistance and within 90 days of the action's effective date for the Food Stamp program. To ask for a Fair Hearing, send a written request to: Department of Administration, Division of Hearings and Appeals, PO Box 7875, Madison, WI 53707-7875.